

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DINO IACULLO,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:10-CV-589-WKW
)	[WO]
UNITED STATES OF)	
AMERICA,)	
)	
Defendant.)	

ORDER

Before the court is the parties' Joint Stipulation of Dismissal (Doc. # 130), although some question remains as to who all is still a party to this case.

Only two parties are listed on the stipulation: Plaintiff Dino Iacullo and Defendant United States of America. Plaintiff's complaint, however, lists four named defendants—the United States, Dr. C.J. Gavarrete, J. Davis, and Dr. Berrios—along with various unnamed defendants. (Doc. # 1, at 2.) The Magistrate Judge twice substituted the United States as the sole defendant in this case pursuant to 28 U.S.C. § 2679(b)(1): first in the initial Recommendation (Doc. # 62, at 1 n.1)—which was later withdrawn—and then again in the largely similar Recommendation issued just under a month after the first (Doc. # 62, at 1 n.1). The court adopted the second iteration of the Recommendation (Doc. # 87).

But the Eleventh Circuit vacated the court's judgment and remanded on other grounds. *Iacullo v. United States*, 657 F. App'x 916, 920 (2016) (per curiam). The panel's opinion, however, did not address the substitution of the United States as the only party. Indeed, the opinion mentions only one defendant: "Defendant United States." *Id.* at 917; *see also, e.g., id.* ("Plaintiff . . . filed this action . . . against the *United States* under the Federal Tort Claims Act The district court ordered *Defendant* to file a 'Special Report' addressing . . . *Defendant's* defenses *Defendant* compiled and submitted a declaration" (emphasis added)). Thereafter, the parties, the Magistrate Judge, and the court appear to have operated (at least for the most part) under the assumption that the United States is the only defendant remaining in this action.

The confusion on this issue is reflected in the parties' Joint Stipulation of Dismissal. (Doc. # 130.) Although the text of the stipulation lists the United States as a singular defendant and the United States is the only defendant to have signed it, the caption muddies the waters by contradicting itself. The relevant part of the caption reads "United States of America, *et al.*, Defendant." The singular "Defendant" immediately follows "*et al.*," which of course suggests that there is more than one defendant in this case.

Because it is past time to clear up this confusion, the court ratifies the Magistrate Judge's substitution of the United States as the only defendant in this

case pursuant to 28 U.S.C. § 2679(b)(1). The Clerk of Court is DIRECTED to terminate the other Defendants in this case—Dr. C.J. Gavarrete, J. Davis, and Dr. Berrios, as well as any unnamed defendants. The Clerk of Court is further DIRECTED to change the caption accordingly.

Now to the matter at hand. Upon consideration of the Joint Stipulation of Dismissal (Doc. # 130) submitted by the parties (meaning Plaintiff Dino Iacullo and Defendant United States), which comports with Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, this action has been dismissed with prejudice by operation of Rule 41, on the terms agreed to and set out by the parties. The Clerk of the Court is DIRECTED to close this case.

DONE this 28th day of September, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE